

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VICTOR KENNARD BOONE-BEY,

Petitioner,

v.

CATHERINE BAUMAN,

Respondent.

Case No. 14-cv-14565

Honorable Laurie J. Michelson

Magistrate Judge Elizabeth A. Stafford

ORDER OF TRANSFER

Michigan prisoner Victor Kennard Boone-Bey (“Petitioner”) has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges his state court convictions for voluntary manslaughter, felon in possession of a firearm, and two counts of possession with a firearm during the commission of a felony, all of which were imposed following a jury trial in Oakland County Circuit Court in 2001. Petitioner was sentenced as a fourth habitual offender to nineteen to sixty years on the manslaughter conviction, a concurrent term of six to twenty years imprisonment on the felon-in-possession conviction, and a consecutive term of two years imprisonment on the felony firearm convictions. Petitioner has filed a prior habeas petition in federal court challenging the same convictions. Therefore, the Court must transfer this petition to the United States Court of Appeals for the Sixth Circuit.

Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), codified at 28 U.S.C. § 2241 *et seq.*, an individual seeking to file a “second or successive” habeas petition must ask the appropriate court of appeals for an order directing the district court to consider the petition. 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *In re Wilson*, 142 F.3d 939, 940 (6th Cir. 1998). This requirement transfers to the court of appeals a

screening function which the district court previously performed. *Felker v. Turpin*, 518 U.S. 651, 664 (1996).

Petitioner has already filed a federal habeas petition challenging the same convictions at issue in this case, which was denied and dismissed with prejudice. *See Boone-Bey v. Vasbinder*, No. 04-CV-74594-DT, 2007 WL 188077 (E.D. Mich. Jan. 22, 2007) (Cleland, J.), *aff'd*, No. 07-1465 (6th Cir. Feb. 1, 2008), *cert den.*, 555 U.S. 851 (Oct. 6, 2008). In 2010, Petitioner filed a Federal Rule of Civil Procedure 60(b) Motion for Relief from Judgment as to the denial of his first petition, which the district court transferred to the Sixth Circuit as a “second or successive” petition. *Boone-Bey v. Vasbinder*, No. 04-CV-74594-DT (E.D. Mich. Nov. 23, 2004), ECF No. 46. The Sixth Circuit dismissed the case for want of prosecution. *Boone-Bey v. Vasbinder*, No. 10-2015 (6th Cir. Aug. 6, 2010), ECF No. 5. Petitioner has not obtained appellate authorization to file another habeas petition as required by 28 U.S.C. § 2244(b)(3)(A).

Accordingly, the Court orders the Clerk of the Court to transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 and *Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997) (“[W]hen a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief . . . is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631.”).

IT IS SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Dated: December 11, 2014

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on December 11, 2014.

s/Jane Johnson
Case Manager to
Honorable Laurie J. Michelson